

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1624 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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RAJANBHAI RAMKRISHNABHAI

Versus

COMPETENT AUTHORITY ADN DY COLLECTOR

Appearance:

MR PM BHATT for Petitioner

MR ST MEHTA A.G.P. for Respondents No.1, 2 & 10.

MR KA PUJ for Respondent No. 3 to 9.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/10/98

ORAL JUDGEMENT

By means of this petition, the petitioner sought for quashing the order dated 24-4-1992 of the Competent Authority and Dy. Collector, Urban Land Ceiling, Ahmedabad and the order dated 27-7-1992 of the Urban Land Tribunal and Ex. Officio - Addl. Chief Secretary to the Government.

2. The competent authority by the order dated 24th April, 1992 declared 1323 sq.mtr. land of Vadaj bearing Survey No. 177 out of Sub Plots No. 2, 3, 4, 5 (Part) Survey No. 2, 4 and 5 as excess land.

3. The petitioner preferred the Appeal No. 68/92 before the Tribunal and that appeal was dismissed by the order dated 27-7-1992. Learned counsel for the petitioner submitted that the land has already been sold to the respondents no. 3 to 9 by the registered Sale Deeds. The competent authority has made the observation that except this document no other document has been brought on record. The respondents no. 3 to 9 have filed an affidavit-in reply in this case. But that affidavit is not on record. It is submitted that the respondents no.3 to 9 purchased the land between 8-12-1975 to 29-1-1976 after obtaining the requisite permission for construction. The proposed site plans were also approved by Ahmedabad Municipal Corporation. The respondents no. 3 to 9 were not made parties before the Competent Authority and they were not issued notice for affording opportunity of being heard to them as required under Rule 5 (2) (ii) of the Urban Land (Ceiling and Regulation) Act, 1976. Under Rule 5 (2) of the Urban Land (Ceiling and Regulation) Rules, 1976, every draft statement prepared under sub-section (1) of Section 8 shall contain the particulars specified in Form No. III and the draft statement shall be served, together with the notice referred to in sub-section (3) of Section 8 on other persons, so far as may be known, who have, or are likely to have any claim to, or interest in the ownership, or possession, or both, of the vacant land by sending the same by registered post addressed to the person concerned. The respondents no. 3 to 9 being transferee have not been issued the notice by the competent authority though the registered sale deeds were on record. Submission of the learned counsel for the parties is that the orders of the competent authority and the Tribunal are illegal as no notice has been issued to the respondents no. 3 to 9 who have purchased the land and after obtaining requisite permission from Ahmedabad Municipal Corporation their site plans are approved by it and construction was raised on the plots and they are not only interested in the property but they are also interested in ownership and possession over the land in question. As such, both the impugned orders are illegal and are not sustainable in the eye of law. I have considered the submissions made on behalf of the parties. Under Rule 5 (2) (ii) of the Urban Land (Ceiling and Regulations) Rules, 1976 the notice is required to be sent to the purchasers who have purchased the land and

they are owners and in possession. But they have not been served with the notice and they have not been provided reasonable opportunity to show that they are bonafide purchasers and transfer of the land was made by way of sale as well as by the registered sale deeds. The transfer of the property was for valuable consideration as required under the law. As such, the notice was necessary to be sent to the respondents no. 3 to 9.

4. The impugned orders passed by both the authorities are in violative of the statutory provision and hence they are not sustainable in the eye of law.

5. Accordingly, this petition is allowed and the order dated 24-4-1992 passed in Case No. ULC/U-7/Form No.1/Dariapur-Kazipur/290 and the order dated 27-7-1992 passed in Appeal No. 68/92 passed by the Urban Land Tribunal and Ex-Officio, Addl. Chief Secretary to the Government, are hereby quashed. The matter is remanded back to the competent authority. The competent authority will issue notice to the present respondents no. 3 to 9 and after providing reasonable opportunity to them the competent is directed to decide the matter in accordance with law as early possible preferably within three months from the date of presentation of a certified copy of this order.

6. Rule is made absolute to the above extent, with no order as to costs.

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